S.B. Civil Misc. Appeal No.716/2004

Taj Khan.
vs.
Shabbir Hussain.

Date : 30.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Joshi, for the appellant.
Mr. JS Bhati, for the respondent.

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At the request of learned counsel for the parties, this appeal is finally heard and decided.

The appellant/plaintiff has challenged the order of the trial court dated 23.4.2004 by which the trial court permitted the defendant no.4 to raise construction over the property in dispute on submitting undertaking that he will not claim any compensation for the construction.

The order dated 23.4.2004 has been challenged by preferring this appeal on 29.5.2004. The interim order was passed by this Court on 2.6.2004 directing both the parties to maintain status quo with respect to the property in dispute. The respondent submitted affidavit and annexed several photographs to show that the construction has already been completed by 31.5.2004 and according to the respondent, he is residing in the constructed portion with

his family.

According to learned counsel for the respondent, in view of the subsequent event, nothing survives in this appeal as only relief of prohibitory injunction was sought by the appellant.

Learned counsel for the appellant vehemently submitted that the contention of the respondent is absolutely false so far as their living in the house in dispute is concerned. It is submitted that even from the photographs placed on record by the respondent himself (one of the photograph which is at No.1), it is clear that the lady has been shown cooking food in the kitchen but there is no gas cylinder in the kitchen. Learned counsel for the appellant submits that the construction was raised after the injunction order passed by this Court on 2.6.2004.

I have considered the submissions of learned counsel for the parties and perused the reasons given by the court below.

So far as raising of construction is concerned, it cannot be disputed in view of the fact that almost 14 photographs have been filed by the respondent. It is also clear from the photographs that substantially all living material are already in the rooms. Therefore, the appellant's prayer for restraining the respondent from raising construction does not survive.

So far as contention of learned counsel for the appellant that the construction was raised after the order dated 2.6.2004 is concerned, it is clear from the facts that the appellant never raised such objection earlier nor submitted any contempt petition before this Court. At such belated stage, when the respondent submitted affidavit and photographs, the appellant's contention that the construction was raised after the stay order dated 2.6.2004 cannot be believed.

However, in the facts and circumstances of the case, it will be proper to direct the court below to decide the suit expeditiously in view of the fact that the suit is for partition of the property.

Consequently, this appeal is disposed of with a direction to the trial court to decide the suit expeditiously as early as possible.

The interim order dated 2.6.2004 granted by this Court is vacated.

(PRAKASH TATIA), J.

S.Phophaliya